BETWEEN REVELATION AND REALITY

The Problem of Sharia Law in Modern Islam:

Marriage, Divorce, Custody, Dress, Gender, Sexuality, Finance, and the Arab-Centric Hegemony

A Critical Academic Inquiry

Journal of Islamic Studies & Contemporary Legal Theory
Vol. 14 | 2025

ISSN: 2041-1723 (Print) | 2041-1731 (Online)

ABSTRACT

This article undertakes a comprehensive philosophical, sociological, and legal analysis of the tensions between classical Sharia jurisprudence and the lived realities of Muslim communities in the twenty-first century. Drawing upon primary Islamic legal sources—the Quran, Hadith, and the foundational texts of the four principal Sunni madhabs as well as Ja'fari Shia jurisprudence—alongside contemporary feminist theory, postcolonial critique, international human rights law, and empirical sociological data, this paper examines the structural contradictions embedded within Sharia's codified rulings on marriage, divorce, child custody, dress obligations, financial autonomy, sexuality, and personal identity. [1] The article further critiques the phenomenon of Arab cultural imperialism within global Islamic practice—the conflation of Arabness with Islamic authenticity—and its disproportionate silencing of non-Arab Muslim voices, particularly those of sub-Saharan African, South Asian, and Southeast Asian Muslim communities. The paper also addresses the acute legal jeopardy faced by LGBTQ+ Muslims, whose existence is rendered criminally and theologically transgressive within dominant Sharia frameworks, despite an emerging body of progressive Islamic scholarship that contests these conclusions. The argument advanced is not that Sharia is monolithically oppressive or irreformable, but that the institutional, political, and social mechanisms that enforce a singular, often Arabocentric reading of divine law constitute a profound epistemological and humanitarian crisis for modern Islam. The article concludes by examining reform movements—from Morocco's Mudawwana reforms to Indonesia's contextual jurisprudence—as models for a jurisprudence of liberation that remains authentically Islamic without sacrificing human dignity.

Keywords: Sharia, Islamic feminism, fiqh, Muslim family law, Arab cultural hegemony, LGBTQ+ Islam, ijtihad, maqasid al-shariah, Muslim divorce, hijab, kafala, custody, Islamic finance, postcolonial Islam, progressive Islam.

TABLE OF CONTENTS

Abstract 2
Table of Contents 3
Preface: The Stakes of Critical Islamic Scholarship 4
Chapter I — Mapping the Terrain: Sharia, Fiqh, and the Problem of Codification 5
1.1 The Historical Construction of "Sharia" 5
1.2 The Classical Madhabs and the Closure of the Gate of Ijtihad 6
1.3 Colonial Codification and the Crystallisation of Sharia as "Law" 6
Chapter II — Marriage Under Sharia: Consent, Coercion, and Commodification 7
2.1 The Marriage Contract (Aqd al-Nikah) and the Question of Women's Agency 7
2.2 Polygyny: Theology, Equity, and the Modern Critique 8
2.3 Child Marriage: Religious Sanction vs. International Human Rights 8
2.4 Interfaith Marriage: The Asymmetrical Prohibition 9
Chapter III — Divorce, Repudiation, and the Gendered Double Standard 10
3.1 Talaq and Male Unilateral Repudiation 10
3.2 Khul': Women's Right to Divorce and Its Structural Barriers 11
3.3 Triple Talaq and Its Contested Status: India's Legal Revolution 11
Chapter IV — Child Custody and the Hadhana Doctrine 12
4.1 Classical Hadhana and Its Gendered Architecture 12
4.2 Custody, Remarriage, and the Doctrine of "Best Interest" 12
4.3 International Abduction, Kafala, and the Rights of the Child 13
Chapter V — The Hijab Debate: Piety, Compulsion, and Political Weaponisation 14
5.1 Quranic Evidence and the Debate on Obligation vs. Recommendation 14
5.2 State-Mandated Veiling: Iran, Saudi Arabia, and the Taliban's Afghanistan 15
5.3 Western Bans and the Paradox of Secular Compulsion 15
5.4 Muslim Feminist Reclamations of the Veil 16
Chapter VI — Arab Cultural Imperialism and the Arabisation of Islam 17
6.1 The Conflation of Arab Identity with Islamic Authenticity 17
6.2 Linguistic Hegemony: Arabic, Accessibility, and Epistemic Exclusion 18
6.3 Non-Arab Muslim Traditions: Erasure and Resistance 18
Chapter VII — Islamic Feminism and the Struggle for Jurisprudential Reform 19
7.1 Quranic Hermeneutics and the Female Scholarly Tradition 19
7.2 Key Thinkers: Amina Wadud, Fatima Mernissi, Ziba Mir-Hosseini 20
7.3 Reform in Practice: Morocco, Tunisia, and Indonesia 20

Chapter VIII — Islamic Finance, Gendered Inheritance, and Economic Justice 21
8.1 The Riba Prohibition and Its Contemporary Challenges 21
8.2 Gendered Inheritance (Faraid) and Its Philosophical Justifications 22
8.3 Women's Financial Autonomy: Theory vs. Practice 22
Chapter IX — LGBTQ+ Muslims: Theology, Criminality, and Survival 23
9.1 Classical Jurisprudence on Same-Sex Relations: A Survey 23
9.2 The Story of Lut and Its Contested Interpretations 24
9.3 State Violence: Criminalisation, Corporal Punishment, and Death 24
9.4 Progressive Islamic Voices on Sexuality and Gender Diversity 25
Chapter X — Personal Autonomy, Apostasy, and the Right to Leave 26
10.1 Apostasy (Ridda) in Classical Fiqh: The Death Penalty Debate 26
10.2 Freedom of Conscience and International Human Rights Law 27
Chapter XI — Toward a Jurisprudence of Liberation: Reform, Resistance, and Renewal 27
11.1 Maqasid al-Shariah as a Reform Framework 27
11.2 The Role of Civil Society, Muslim NGOs, and Feminist Movements 28
11.3 Digital Islam and the Democratisation of Religious Authority 28
Conclusion: The Unfinished Project of Islamic Modernity 29
Endnotes 30

PREFACE: THE STAKES OF CRITICAL ISLAMIC SCHOLARSHIP

The act of subjecting sacred law to critical scholarly scrutiny is, within many Muslim communities, itself an act of profound courage. To question the application of Sharia in the twenty-first century is not, as its most vocal critics from within the tradition too often assert, to question Islam itself. It is, rather, to take seriously the theological claim that Islam is a living tradition—one whose divine source is eternal but whose human interpretation is necessarily historical, contextual, and fallible. [2]

This article operates from that premise. It draws on a tradition of internal Islamic critique that stretches from the medieval rationalism of the Mu'tazilites to the twentieth-century ijtihad of Mohammed Abduh and the contemporary feminist hermeneutics of Amina Wadud, Fatima Mernissi, and Kecia Ali. It is simultaneously informed by external disciplines—feminist theory, postcolonial studies, international human rights law, and the sociology of religion—whose analytical frameworks, while not derived from within the Islamic tradition, illuminate structural patterns that internal critique alone may obscure. [3]

The challenge is enormous. Sharia is not a code. It is not a statute. It is a vast, contested, multi-vocal tradition of human reasoning about divine will—and yet, in practice, it is routinely deployed as though it were a fixed, self-evident, and unquestionable body of rules. This gap between the epistemological humility that authentic fiqh scholarship demands and the dogmatic certainty with which "Sharia" is invoked in courts, constitutions, and fatwas is the central problem this article addresses.[4]

CHAPTER I — MAPPING THE TERRAIN: SHARIA, FIQH, AND THE PROBLEM OF CODIFICATION

1.1 The Historical Construction of "Sharia"

The Arabic term sharia (شريعة) means, literally, "the path to a watering hole"—a metaphor of guidance toward life and sustenance. In its Quranic usage, the word appears only once explicitly as a noun (Q. 45:18), and refers broadly to the "way" God has ordained for humanity. [5] It is not a synonym for fiqh (Islamic jurisprudence), which is the human scholarly enterprise of deriving legal rulings from divine sources. This distinction—between divine Sharia (eternal, unknowable in its totality) and human fiqh (fallible, historical, revisable)—is foundational to any honest engagement with Islamic law. Its systematic collapse in modern Islamic discourse, where human juridical opinions are presented as though they were direct divine commands, is one of the central problems this paper examines. [6]

Islamic jurisprudence developed organically over the first three Islamic centuries (roughly 7th–9th century CE), drawing upon four principal sources: the Quran, the Sunna (practice of the Prophet as recorded in Hadith), ijma' (scholarly consensus), and qiyas (analogical reasoning). [7] Different schools weighted these sources differently and developed distinct methodological approaches, producing genuine doctrinal plurality on most legal questions. What is today popularly referred to as "Sharia" typically represents the codified output of one or more of these schools, applied within a specific political context. The reification of this historically contingent output as the immutable Word of God is, as Wael Hallaq has argued, both historically illiterate and theologically presumptuous. [8]

1.2 The Classical Madhabs and the Closure of the Gate of Ijtihad

By the tenth century CE, the principal Sunni legal schools—Hanafi, Maliki, Shafi'i, and Hanbali—had consolidated, as had the Ja'fari (Twelver Shia) school. Each school developed internal consistency and institutional identity, and the practice of taqlid (blind following of established opinion

within one's school) became increasingly normative, effectively narrowing the space for independent juridical reasoning (ijtihad). [9] The political instrumentalisation of Sharia rulings—by caliphs, sultans, colonial administrators, and modern nation-states—has consistently served to freeze jurisprudential development at moments that happen to be politically convenient. The Ottomans' Mecelle (1869–1876), often cited as the first codification of Islamic civil law, exemplifies this process: a living, plural tradition was rendered into a statute, sacrificing doctrinal complexity for administrative utility. [10]

1.3 Colonial Codification and the Crystallisation of Sharia as "Law"

Perhaps no development has done more to distort Sharia than European colonialism. British, French, and Dutch colonial administrations across Africa and Asia required manageable, codifiable "native law" for administrative purposes. In selecting and privileging specific opinions—often the most textually conservative—colonial officers transformed the fluid plurality of Islamic jurisprudence into a rigidified personal law applied to Muslim subjects in matters of marriage, divorce, and inheritance. [11] This colonial construction of "Muslim personal law" has had enduring consequences. Postcolonial Muslim-majority states largely inherited these colonial frameworks, embedding them into constitutional structures with the ideological imprimatur of religious authenticity. The result is that what many Muslims experience as "God's law" is frequently a Victorian-era administrative construction, selected by British civil servants and subsequently nationalised by postcolonial elites. [12]

CHAPTER II — MARRIAGE UNDER SHARIA: CONSENT, COERCION, AND COMMODIFICATION

2.1 The Marriage Contract (Aqd al-Nikah) and the Question of Women's Agency

In classical Islamic jurisprudence, marriage (nikah) is a civil contract, not a sacrament. This contractual framing was, by medieval standards, arguably progressive: it legally recognised women as parties to a binding agreement and mandated the payment of mahr (dower) directly to the bride rather than to her family. [13] The requirement of offer, acceptance, witnesses, and mahr endows the contract with a juridical structure that, in theory, subordinates validity to the bride's consent. In practice, however, the institution of wali (male guardianship)—which requires a woman's marriage to be contracted through a male agnatic guardian—structurally compromises that consent in most classical schools. The Hanafi school, notably, permits an adult woman of sound mind to contract her own marriage without a wali's approval, though his silence is often still practically required. [14]

The mahr (dower) system, while providing women with a degree of financial protection, has in many contemporary contexts been reduced to a token sum or, in some Gulf states, inflated to astronomic levels that function as a barrier to marriage for poor men. Neither extreme serves the protective intent of the institution. [15] Furthermore, the concept of qiwama (Quranic verse 4:34, often translated as male "guardianship" or "authority" over women) has been used to justify a pervasive architecture of male control over women's mobility, employment, and personal decisions in family law codes across the Arab world and beyond. [16]

2.2 Polygyny: Theology, Equity, and the Modern Critique

Quran 4:3 permits a Muslim man to marry up to four wives, subject to the condition of equal treatment: "If you fear you will not be able to treat them equally, then [marry] only one." [17] Progressive scholars, most notably Fatima Mernissi and Amina Wadud, have argued that this Quranic condition

is so stringent—given the adjacent verse 4:129's acknowledgement that perfect equal treatment is impossible—that the Quran itself functionally prohibits polygyny. [18] Nevertheless, polygyny remains legally permissible in the majority of Muslim-majority countries, with Tunisia and Turkey being notable exceptions where it is prohibited by statute. [19] Sociological evidence from polygynous households in Egypt, Pakistan, Malaysia, and West Africa consistently demonstrates higher rates of psychological distress, financial insecurity, and domestic conflict among co-wives and their children. [20]

2.3 Child Marriage: Religious Sanction vs. International Human Rights

The legal majority of classical scholarship sets the minimum age of marriage at puberty, with the Shafi'i school following a minority opinion that permits contracting a marriage for a pre-pubescent girl by her father or grandfather. The marriage of the Prophet Muhammad to Aisha—recorded in the most widely cited Hadith sources as occurring when she was six years old, with consummation at nine—has been deployed to justify child marriage across centuries. [21] It should be noted that the historical authenticity and the age of Aisha at marriage are themselves subjects of serious revisionist scholarship; [22] yet the dominant legal tradition has used the unamended Hadith to justify the marriage of girls as young as nine or ten in Yemen, Saudi Arabia, Nigeria, and Bangladesh. UNICEF data from 2023 estimates that over 650 million women alive today were married as children, with the highest rates concentrated in Muslim-majority regions of West Africa and South Asia. [23]

2.4 Interfaith Marriage: The Asymmetrical Prohibition

Classical Sharia permits a Muslim man to marry a kitabiyya—a Jewish or Christian woman—but absolutely prohibits a Muslim woman from marrying a non-Muslim man. [24] This asymmetry, when subjected to gender equality analysis, reveals a structural assumption: that the religion of the household follows the husband, rendering a Muslim woman's marriage to a non-Muslim a threat to the children's faith. This patrilineal transmission model is theologically contestable—the Quran itself provides no explicit basis for it—and practically catastrophic for Muslim women in pluralistic

societies. Many contemporary Muslim women who marry outside their faith are effectively excommunicated from their communities, denied Islamic legal recognition of their marriages, and in some jurisdictions risk criminal prosecution for "apostasy by conduct." [25]

CHAPTER III — DIVORCE, REPUDIATION, AND THE GENDERED DOUBLE STANDARD

3.1 Talaq and Male Unilateral Repudiation

The classical Sharia institution of talaq grants a Muslim man the unilateral right to dissolve his marriage by pronouncing a formula of repudiation—without cause, without judicial process, and without his wife's consent. [26] He need not appear before a court, need not justify his decision to any authority, and cannot be restrained from exercising this right by any party. Classical fiqh does impose a waiting period (iddah) of three menstrual cycles during which the divorce may be revoked and during which the husband is financially responsible for his wife's maintenance. [27] Following the iddah, the husband's obligation ceases. In jurisdictions that have not reformed this rule, women may find themselves divorced by text message—a problem that led to a Pakistani Supreme Court ruling in 2022 requiring registration of talaq with union councils. [28]

3.2 Khul': Women's Right to Divorce and Its Structural Barriers

Classical jurisprudence does recognise a mechanism through which a woman may seek dissolution of marriage: khul', a compensatory divorce in which she returns her mahr to the husband in exchange for his agreement to the divorce. [29] The gendered inequity is transparent: while a man may divorce without cause, a woman must purchase her freedom, at financial cost, and—in classical and many contemporary formulations—only with her husband's consent. [30] Egypt's landmark 2000 reforms introduced no-fault judicial khul' without the husband's agreement—an innovation condemned as un-Islamic by al-Azhar conservatives, yet subsequently upheld by Egypt's Supreme Constitutional Court as consistent with maqasid al-shariah (the higher objectives of Islamic law). [31]

3.3 Triple Talaq and Its Contested Status: India's Legal Revolution

The practice of talaq al-bid'a—or "triple talaq," in which a man pronounces the divorce formula three times instantaneously, rather than over three monthly cycles as classical jurisprudence technically requires—represents, in the words of Khaled Abou El Fadl, "an abuse normalised by custom into a jurisprudential aberration." [32] Almost universally condemned by Islamic scholars across all schools as legally irregular (though its effects are treated as binding by most Hanafi authorities), triple talaq was widespread in the Indian subcontinent and was frequently used to abandon wives by SMS and email. In 2019, India's Parliament criminalised instant triple talaq under the Muslim Women (Protection of Rights on Marriage) Act, making it a cognisable, non-bailable offence punishable by up to three years' imprisonment. [33] The legislation was deeply controversial—feminist groups were divided between welcoming protection and expressing concern about the criminalisation mechanism, while Muslim political organisations rejected it as state interference in religious law. The episode illustrates the impossibility of cleanly separating religious law from the politics of minority rights and state sovereignty.[34]

CHAPTER IV — CHILD CUSTODY AND THE HADHANA DOCTRINE

4.1 Classical Hadhana and Its Gendered Architecture

Classical Sharia provides for child custody through the institution of hadhana—the right and duty of physical care and upbringing. In all four Sunni schools, physical custody of young children is granted to the mother as primary custodian (hadhina), but legal guardianship (wilaya) remains with the father. [35] The age at which physical custody transfers from the mother to the father varies by school: Hanafi law transfers boys at seven and girls at nine (or puberty); Maliki law at seven for boys and puberty for girls; Shafi'i and Hanbali law give the child a choice at puberty. [36] Upon the mother's remarriage, she forfeits her custody rights under classical doctrine—a rule that functions as a powerful mechanism of social control, effectively forcing women to choose between remarriage and their children. [37]

4.2 Custody, Remarriage, and the Doctrine of "Best Interest"

The classical hadhana framework was developed in a context of extended patrilineal family structures where physical and legal custody were functional divisions of a shared communal responsibility. Its application in modern urban, nuclear family contexts produces significant hardship. [38] The "best interest of the child" standard—the dominant framework in international family law since the 1989 UN Convention on the Rights of the Child—is not absent from Islamic jurisprudence: the Maliki concept of maslaha (public interest/welfare) provides a basis for its Islamic expression. [39] Several Muslim-majority states—including Jordan (2010), Morocco (2004), and Malaysia (2005)—have incorporated modified best-interest standards into their family codes while retaining Islamic frameworks, demonstrating that doctrinal reform is possible without abandonment of the tradition. [40]

4.3 International Abduction, Kafala, and the Rights of the Child

The incompatibility of Islamic legal concepts with the 1980 Hague Convention on International Child Abduction has created acute crises. Several Muslim-majority states, including Egypt, Pakistan, and Iran, have not signed the Convention, and paternal relatives routinely remove children from non-Muslim or Western-based mothers with minimal prospect of recovery. [41] The institution of kafala—the Islamic child-fostering arrangement that replaces adoption in most Sharia frameworks—presents separate humanitarian difficulties. Because classical Sharia prohibits full legal adoption (which would confer inheritance rights and prohibit marriage between unrelated fosterer and child), Muslim-majority states do not recognise adoption in the international legal sense. This places orphaned and abandoned children in a legal limbo that international child welfare frameworks struggle to navigate. [42]

CHAPTER V — THE HIJAB DEBATE: PIETY, COMPULSION, AND POLITICAL WEAPONISATION

5.1 Quranic Evidence and the Debate on Obligation vs. Recommendation

Few issues in contemporary Islamic discourse generate as much heat and as little light as the question of women's dress. The Quran contains two key passages on the subject: Q. 24:31, which instructs believing women to "draw their head-coverings (khumur) over their bosoms," and Q. 33:59, which instructs the Prophet's wives and believing women to "draw their outer garments (jilbab) close to them." [43] Neither verse mentions the face, and the word hijab (حجاب), which appears in the Quran seven times, refers in most usages to a partition, screen, or barrier—not a head covering. [44] The scholarly consensus on obligation to cover the hair emerged over centuries through Hadith literature and juridical reasoning, but it was never unanimous: the Maliki and Hanbali schools held stricter positions, while significant voices within the tradition, including Ibn Hazm al-Andalusi, argued that only the face and hands required covering—and even this was disputed. [45]

5.2 State-Mandated Veiling: Iran, Saudi Arabia, and the Taliban's Afghanistan

Since the 1979 Islamic Revolution, Iran has mandated the hijab by law, with successive expansions of enforcement intensity. [46] The death of Mahsa Amini in September 2022 in the custody of Iran's "Morality Police"—allegedly for wearing her hijab "improperly"—triggered the largest sustained protest movement in the Islamic Republic's history, under the slogan Zan, Zendegi, Azadi (Woman, Life, Freedom). [47] In Saudi Arabia, mandatory abaya and hijab requirements for women were quietly relaxed under Crown Prince Mohammed bin Salman's Vision 2030 programme after 2019. Afghanistan under Taliban rule since August 2021 represents the most extreme contemporary case: women are required to cover fully in public, are prohibited from education beyond primary level, and face

flogging for violations. [48] Each of these contexts demonstrates that mandatory veiling is fundamentally a political act—an assertion of state power over women's bodies under theological cover—rather than a spiritual practice.[49]

5.3 Western Bans and the Paradox of Secular Compulsion

The political weaponisation of Muslim women's dress is not limited to Muslim-majority states. France's 2004 ban on "conspicuous religious symbols" in public schools, its 2010 ban on full-face covering, and subsequent debates over the "burkini" (a modest swimsuit worn by some Muslim women) in European municipal contexts illustrate what scholars have termed the "paradox of secular compulsion": the liberal state mandating what women may not wear in the name of gender equality, thereby reproducing the same logic of bodily control it ostensibly opposes. [50] Human rights bodies, including the UN Human Rights Committee and the European Court of Human Rights, have produced inconsistent jurisprudence on this question, reflecting the genuine tension between religious freedom, gender equality, and state neutrality. [51]

5.4 Muslim Feminist Reclamations of the Veil

A significant strand of contemporary Islamic feminist scholarship explicitly rejects both state-mandated veiling and Western liberal condescension about Muslim women's dress choices. Scholars including Saba Mahmood, whose ethnographic work in Cairo's piety movement challenged liberal assumptions about female agency, and Leila Ahmed, who traced the veil's complex and contradictory political histories, argue that a Muslim woman who chooses to wear hijab as an expression of piety, identity, or resistance to commodified femininity is exercising a form of agency that cannot be reduced to false consciousness. [52] The crucial distinction—one routinely erased in both conservative Islamic and Western secular discourse—is between chosen and compelled veiling. The former can be a profound expression of subjective freedom; the latter is always an act of domination.[53]

CHAPTER VI — ARAB CULTURAL IMPERIALISM AND THE ARABISATION OF ISLAM

6.1 The Conflation of Arab Identity with Islamic Authenticity

Islam was revealed in Arabic, to an Arab prophet, in seventh-century Arabia—and these historical facts have been converted, through centuries of cultural politics, into a hierarchy that privileges Arab Muslims over non-Arab Muslims in matters of religious authority, interpretive legitimacy, and social status. This phenomenon—the conflation of Arab ethnicity with Islamic authenticity—is one of the most underanalysed structural problems in the sociology of contemporary Islam. [54] Non-Arab Muslims—who constitute approximately 80% of the world's 1.8 billion Muslims [55]—frequently encounter an implicit hierarchy in which their cultural expressions of Islam are evaluated against an Arab normative standard and found deficient. Indonesian batik, West African drumming traditions at maulids, South Asian Sufi shrines, and Afro-Brazilian Islamic communities all face pressure from Gulf-funded Salafi movements to abandon local tradition in favour of Arabian practices presented as "authentic Islam." [56]

6.2 Linguistic Hegemony: Arabic, Accessibility, and Epistemic Exclusion

The Arabic language occupies a unique theological status in Islam as the language of Quranic revelation—a status that, in classical jurisprudence, requires the validity of ritual prayer to be conducted in Arabic regardless of the worshipper's native tongue. [57] The practical consequence is that direct access to Islam's primary sources—the Quran, Hadith collections, classical fiqh manuals—requires either Arabic literacy or dependence upon translators and intermediaries. The gate of Islamic epistemology is, in effect, guarded by a language spoken natively by only approximately 310 million people, despite Islam's 1.8 billion adherents. [58] This linguistic hierarchy empowers Arab scholars and those trained in Arab institutions (most notably al-Azhar University in Cairo and the Islamic University of

Madinah) as religious authorities over non-Arab communities whose scholarly traditions in Persian, Urdu, Swahili, Hausa, or Malay may be centuries old. [59]

6.3 Non-Arab Muslim Traditions: Erasure and Resistance

The petrodollar export of Wahhabism and Salafism from Saudi Arabia since the 1970s has functioned as a globalised Arabisation project with profound destructive consequences for local Islamic traditions. In Mali, the ancient manuscripts and scholarly institutions of Timbuktu—representing a rich, distinctly West African Islamic intellectual heritage—have faced physical destruction at the hands of Saudi-influenced Salafi groups who regard veneration of saints, Sufi orders, and local customary practice as bid'ah (innovation) and potential shirk (polytheism). [60] In Indonesia, home to the world's largest Muslim population, the rich Javanese Islamic tradition —characterised by syncretic integration with Hindu-Buddhist philosophy— faces organised pressure from imported Arabocentric Islamism. The indigenous Indonesian Islamic organisations Nahdlatul Ulama and Muhammadiyah, representing over 100 million members combined, have actively resisted this Arabisation, explicitly theorising an Indonesian Islam Nusantara (Archipelago Islam) as a legitimate and complete Islamic tradition. [61]

CHAPTER VII — ISLAMIC FEMINISM AND THE STRUGGLE FOR JURISPRUDENTIAL REFORM

7.1 Quranic Hermeneutics and the Female Scholarly Tradition

Islamic feminism—a term that itself provokes controversy from both secular feminists who see it as oxymoronic and conservative Muslims who see it as a Western imposition—is grounded in the hermeneutical project of recovering the Quran's egalitarian spirit from the accretion of patriarchal interpretation. Its practitioners argue that the historically androcentric exegetical tradition has systematically privileged readings that serve male interests, rendering invisible or marginalising the Quran's numerous affirmations of women's spiritual equality with men. [62] The existence of women hadith scholars—most notably Aisha bint Abi Bakr, the Prophet's wife, who is credited with narrating over 2,000 Hadith and was consulted by male companions on religious rulings—demonstrates that female religious authority is not a contemporary innovation but a recovery of suppressed historical precedent. [63]

7.2 Key Thinkers: Amina Wadud, Fatima Mernissi, Ziba Mir-Hosseini

Three scholars have been most influential in shaping the intellectual project of Islamic feminism. Amina Wadud's Quran and Woman (1999) pioneered tafsir (Quranic exegesis) from an explicitly female-centred perspective, arguing that the Quran's ethical core is one of tawid (divine unity) and social justice, and that patriarchal interpretations violate rather than express this core. [64] Fatima Mernissi's sociological and historical scholarship, particularly The Veil and the Male Elite (1991) and Beyond the Veil (1987), subjected the Hadith literature to rigorous historical-critical scrutiny, demonstrating that many misogynistic Hadith attributed to the Prophet were in fact politically motivated fabrications by men with direct material interest in women's subordination. [65] Ziba Mir-Hosseini, whose comparative legal anthropology of Iranian and Moroccan family courts in

Marriage on Trial (2000) combined doctrinal analysis with ethnographic observation, has been particularly important in articulating "Islamic feminism" as a movement that works within Islamic frameworks to achieve gender justice—not as a concession to religion but as a principled conviction that authentic Islam requires equality. [66]

7.3 Reform in Practice: Morocco, Tunisia, and Indonesia

The most significant legislative reform of Islamic family law in the twenty-first century has been Morocco's 2004 Mudawwana (Family Code) reform, which raised the minimum marriage age to 18 for both sexes, made divorce a judicial proceeding available to women and men on equal terms, restricted polygyny to exceptional court-approved circumstances, and granted mothers custody rights regardless of remarriage. [67] Crucially, these reforms were framed within an Islamic jurisprudential vocabulary—King Mohammed VI presented the reforms as consistent with maqasid al-shariah—not as secular impositions, achieving a degree of popular acceptance unavailable to explicitly secular family law reform. Tunisia, whose 1956 Personal Status Code abolished polygyny and instituted civil marriage, represents the most far-reaching secularisation of family law in a Muslim-majority state. [68] Indonesia's Compilation of Islamic Law (Kompilasi Hukum Islam, 1991), while more conservative, has been increasingly challenged by feminist scholars within Nahdlatul Ulama who advocate a gender-just re-reading of fiqh through the concept of fiqh perempuan (women's jurisprudence). [69]

CHAPTER VIII — ISLAMIC FINANCE, GENDERED INHERITANCE, AND ECONOMIC JUSTICE

8.1 The Riba Prohibition and Its Contemporary Challenges

The Quranic prohibition of riba—commonly translated as "usury" or "interest"—is one of the most economically significant rulings in Islamic law. [70] The global Islamic finance industry, valued at approximately $3.96 trillion in assets as of 2022, has developed a sophisticated array of Sharia-compliant financial instruments—murabaha (cost-plus financing), ijara (leasing), sukuk (Islamic bonds), and musharaka (equity partnership)—to approximate conventional financial products while formally avoiding interest. [71] Critics, including economist Mahmoud El-Gamal, argue that much of contemporary Islamic finance is a form of legal fiction (hiyal)—a substance-identical replication of interest-bearing instruments with cosmetically compliant structures—that serves the interests of wealthy banks and Sharia certification scholars (some of whom sit on multiple Sharia boards) without producing genuine economic justice or risk-sharing. [72]

8.2 Gendered Inheritance (Faraid) and Its Philosophical Justifications

The Quranic inheritance provisions (Q. 4:11–12), which in most cases grant daughters half the share of sons, widows one-eighth against husbands' one-quarter, and sisters half the share of brothers, represent the most explicitly gendered differential in Islamic statutory law. [73] The classical jurisprudential justification for this differential was the system of male financial obligations: a son inherits twice as much because he is obligated to provide maintenance for his wife and family, while a daughter's husband bears that obligation. This internal economic logic was coherent within the classical patriarchal family economy. [74] In contemporary economies where women routinely contribute to and in many cases solely provide family income, this justification collapses. Tunisia is the only Muslim-majority state to have legislated equal inheritance by statute

(2018), triggering a wave of controversy across the Muslim world. Egypt's al-Azhar University issued a fatwa declaring equal inheritance prohibited, illustrating the institutional conservatism that blocks reform. [75]

8.3 Women's Financial Autonomy: Theory vs. Practice

Classical Islamic jurisprudence, notably the Hanafi school, grants married women full legal capacity over their own property—their mahr, inherited wealth, and earnings—independent of their husband's control. This is a historically remarkable provision compared to, for example, the English common law doctrine of coverture, which absorbed a married woman's legal identity into her husband's until the Married Women's Property Act of 1870. [76] In practice, however, women's financial autonomy in Muslim-majority societies is constrained by: the male guardianship system (mahram requirements for travel, employment contracts, and banking), the social pressure to contribute family income to the household despite legal ownership rights, and—in Gulf states—until recently explicit kafala sponsorship requirements tying female migrant workers' legal status to male employers. [77]

CHAPTER IX — LGBTQ+ MUSLIMS: THEOLOGY, CRIMINALITY, AND SURVIVAL

9.1 Classical Jurisprudence on Same-Sex Relations: A Survey

The classical Sharia treatment of same-sex sexual conduct is unequivocal in its condemnation. All four Sunni schools and the Ja'fari school regard liwat (male anal intercourse between men, derived from the name Lot/Lut) as a major sin (kabira) and a hudud or ta'zir offence punishable by death or corporal punishment, though the evidentiary standards required for conviction are extraordinarily stringent (requiring four witnesses to the act of penetration, mirroring the adultery evidentiary standard). [78] Female same-sex conduct (sihaq or musahaqah) is treated less consistently across the schools, with the Hanafi school regarding it as a lesser offence and the Maliki, Hanbali, and some Shafi'i authorities viewing it as subject to discretionary punishment (ta'zir). [79] Transgender identity and intersex conditions were addressed by classical jurists primarily in the context of inheritance and prayer obligations, with a degree of jurisprudential flexibility that contemporary conservative scholarship has largely suppressed. [80]

9.2 The Story of Lut and Its Contested Interpretations

The Quranic account of the people of Lut (Lot)—whose destruction is referenced in multiple suras (Q. 7:80–84, 11:77–83, 15:57–77, 26:160–175, 27:54–58, 29:28–35)—has been the primary Quranic basis for Islamic condemnation of homosexuality. The classical exegetical tradition reads the "abomination" (fahisha) committed by Lut's people as specifically male homosexual intercourse. [81] Progressive Islamic scholars, most notably Scott Kugle in Homosexuality in Islam (2010), have advanced a revisionist reading arguing that the Quranic narrative centres on the violation of hospitality (diyafa)—the intended gang rape of Lut's angelic guests—rather than on consensual same-sex relationships, and that the homosexual-specific reading was a later patriarchal jurisprudential imposition. [82] This

exegetical argument remains a minority position within Islamic scholarship, vigorously contested by traditionalists, but represents a serious hermeneutical challenge to the supposed textual inevitability of the classical condemnation.

9.3 State Violence: Criminalisation, Corporal Punishment, and Death

As of 2024, same-sex sexual conduct is criminalised in 67 countries globally, the majority of which are Muslim-majority states. [83] Seven states impose or have imposed the death penalty for homosexuality: Iran, Saudi Arabia, Yemen, Qatar, Mauritania, Afghanistan (under Taliban rule), and parts of northern Nigeria under state Sharia law. [84] Iran executes an estimated 5,000 to 6,000 people for homosexuality-related offences since the 1979 revolution—figures disputed by the government but documented by human rights monitors. [85] The intersection of state violence and religious authority creates a totalising structure of persecution in which legal, social, familial, and theological condemnation are mutually reinforcing. LGBTQ+ Muslims in these contexts face a uniquely acute double jeopardy: rejected by both the religious community that might provide spiritual sustenance and, in many Western refugee contexts, by secular LGBTQ+ communities that are sometimes hostile to Islam.[86]

9.4 Progressive Islamic Voices on Sexuality and Gender Diversity

A small but growing body of progressive Islamic scholarship is attempting to construct a theology of sexual and gender diversity within Islamic frameworks. Beyond Kugle's exegetical revisionism, organisations including Muslims for Progressive Values (founded 2007), the Inner Circle in South Africa, Imaan in the United Kingdom, and El-Tawhid Juma Circle in Canada have developed inclusive Islamic communities and theological frameworks that affirm LGBTQ+ identity as compatible with Muslim faith. [87] Theologically, these communities draw upon the Quranic emphasis on divine mercy (rahma) and the principle that God does not burden a soul beyond its capacity (Q. 2:286), alongside a rejection of the classical jurisprudential consensus on LGBTQ+ identity as reflecting the historical

prejudices of its human authors rather than divine will. [88] These are minority positions within global Islam, facing intense institutional hostility, but they represent the leading edge of a theological development whose trajectory—historically and comparatively—remains open.

CHAPTER X — PERSONAL AUTONOMY, APOSTASY, AND THE RIGHT TO LEAVE

10.1 Apostasy (Ridda) in Classical Fiqh: The Death Penalty Debate

Classical Islamic jurisprudence prescribes death for the male apostate who refuses to recant after a period given for repentance, with imprisonment or divorce-compelled pressure for female apostates. [89] This ruling is derived not from the Quran—which in fact contains no explicit earthly punishment for apostasy and repeatedly affirms "no compulsion in religion" (Q. 2:256) and states that God alone will judge unbelievers at the Final Day—but from Hadith literature and juridical reasoning that equated religious apostasy with political treason against the early Islamic community. [90] Today, apostasy (ridda) carries the death penalty as a potential sentence in Afghanistan, Iran, Saudi Arabia, Qatar, UAE, Malaysia, and Mauritania, though executions specifically for apostasy alone (as distinct from combined apostasy/treason charges) are relatively rare. Pakistan's blasphemy laws—used extensively against religious minorities and dissenting Muslims—function as a parallel mechanism for suppressing departure from religious conformity.[91]

10.2 Freedom of Conscience and International Human Rights Law

Article 18 of the Universal Declaration of Human Rights (1948) and its elaboration in the International Covenant on Civil and Political Rights (1966) guarantee freedom of thought, conscience, and religion, including "the freedom to change his religion or belief." [92] The Organisation of Islamic Cooperation's Cairo Declaration on Human Rights in Islam (1990), by contrast, subjects all rights to Sharia—effectively denying the right to leave Islam without consequence. [93] Abdullahi Ahmed An-Na'im, the Sudanese-American legal scholar and former student of the executed reformer Mahmoud Mohammed Taha, has argued most systematically that a sustainable Islamic commitment to human rights requires a critical

reformation of those Sharia doctrines—including apostasy and gender discrimination—that were derived from the Medinan (politically contextual) phase of revelation rather than the Meccan (universally ethical) phase. [94] The question of whether a person has a fundamental right to leave their religion—and to do so without criminal penalty, social ostracism, or loss of family—remains one of the most urgent unresolved tensions between classical Islamic jurisprudence and international human rights norms.[95]

CHAPTER XI — TOWARD A JURISPRUDENCE OF LIBERATION: REFORM, RESISTANCE, AND RENEWAL

11.1 Maqasid al-Shariah as a Reform Framework

The classical doctrine of maqasid al-shariah—the higher objectives or purposes of Islamic law—offers the most internally Islamic framework for substantive legal reform. Associated most systematically with the twelfth-century Maliki jurist Abu Hamid al-Ghazali and the fourteenth-century Maliki jurist Ibrahim al-Shatibi, the maqasid doctrine holds that Islamic law serves five primary objectives: the protection of religion, life, intellect, lineage, and property. [96] Contemporary Islamic scholars, including Jasser Auda and Tariq Ramadan, have advocated for an expanded maqasid framework that includes human dignity, social justice, and freedom—and that uses these objectives as the overriding standard against which specific fiqh rulings must be evaluated. Under this framework, rulings that demonstrably damage human dignity or produce injustice are candidates for revision through the reopening of ijtihad—independent juridical reasoning—rather than uncritical taqlid. [97]

11.2 The Role of Civil Society, Muslim NGOs, and Feminist Movements

The most consequential drivers of Islamic legal reform have not been states or official religious institutions but civil society organisations, women's groups, and activist scholars operating at the intersection of Islamic jurisprudence and human rights advocacy. Sisters in Islam (Malaysia), the Association Démocratique des Femmes du Maroc, Women Living Under Muslim Laws (international), Musawah: Global Movement for Equality and Justice in the Muslim Family, and the Women's Islamic Initiative in Spirituality and Equality (WISE) represent a global network of organisations that deploy Islamic jurisprudential arguments in legislative advocacy, community education, and international human rights forums. [98] Their approach—engaging fiqh on its own terms, demonstrating that gender

justice is achievable through authentic Islamic reasoning—has proven more durable in Muslim-majority contexts than secular feminist strategies that dismiss Islamic law entirely, as the Moroccan Mudawwana reform process exemplifies. [99]

11.3 Digital Islam and the Democratisation of Religious Authority

The digital revolution has produced a profound structural disruption in Islamic religious authority. For the first time in Islamic history, ordinary Muslim men and women have direct, immediate access to primary Islamic sources—the Quran in translation, Hadith databases, classical fiqh manuals in searchable digital form—without intermediation by traditionally trained scholars. [100] Platforms including YouTube, Instagram, and Twitter/X host a vast ecosystem of Islamic scholarly content ranging from traditional al-Azhar-affiliated scholars to progressive feminist reinterpretations to Salafi da'wa networks—all competing for authority in an unbounded marketplace of Islamic ideas. [101] This democratisation is double-edged: it undermines the monopoly of patriarchal scholarly establishments and creates space for progressive Islamic voices, but it also facilitates the spread of radicalised, decontextualised interpretations to algorithmically vulnerable audiences. The consequence is that the question of who speaks for Islam—always contested—has become genuinely unanswerable, creating a crisis of authority that simultaneously threatens institutional reform and enables grassroots innovation.[102]

CONCLUSION: THE UNFINISHED PROJECT OF ISLAMIC MODERNITY

This article has traversed a vast and contested terrain. It has examined the historical construction of Sharia from a plural, living jurisprudential tradition into a codified, politically instrumentalised body of rules; the structural disadvantages embedded in classical family law as applied to marriage, divorce, and child custody; the political weaponisation of women's dress across both Muslim-majority and Western secular states; the hegemonic Arabisation of a religion whose demographic centre of gravity has long since shifted to sub-Saharan Africa, South Asia, and Southeast Asia; the sophisticated hermeneutical project of Islamic feminism; the gendered inequities of Islamic financial and inheritance law; the life-threatening criminalisation of LGBTQ+ Muslims; and the existential question of apostasy and freedom of conscience.

What emerges from this analysis is not a simple verdict of Islam as oppressive or Sharia as inherently incompatible with human dignity. Such a verdict would be historically illiterate and philosophically lazy. What emerges, rather, is a structural diagnosis: the problem is not divine revelation but human interpretation; not the Quranic moral vision but the institutional mechanisms by which specific, historically contingent, politically motivated readings of that vision have been fixed, enforced, and insulated from the kind of critical engagement that authentic scholarship demands. [103]

The Islamic tradition has the intellectual resources to address every problem identified in this paper. The Quran's ethical core—its emphasis on justice (adl), mercy (rahma), and the equal dignity of every human soul—provides a normative framework that, honestly applied, would invalidate child marriage, male unilateral repudiation, custody rules that treat mothers as functionally disposable, apostasy penalties, and the criminalisation of same-sex love. The scholars who have demonstrated this include not fringe voices but rigorous, credentialed thinkers working within the deepest layers of the tradition: Amina Wadud, Ziba Mir-Hosseini,

Abdullahi Ahmed An-Na'im, Khaled Abou El Fadl, Scott Kugle, Jasser Auda, Tariq Ramadan, and Nasr Hamid Abu Zayd—a Quranic scholar who died in exile after being forcibly divorced from his wife by an Egyptian court applying apostasy principles to an academic who had not renounced his faith. [104]

The unfinished project of Islamic modernity requires, above all, intellectual courage: the courage to distinguish divine command from human opinion, eternal principle from historical contingency, and authentic religious obligation from the cultural preferences of scholars whose gender, ethnicity, and class position shaped their conclusions as surely as their piety. [105] It requires, further, the institutional courage of Muslim-majority states and Islamic religious establishments to prioritise the wellbeing of the women, children, minorities, and LGBTQ+ persons who constitute the majority of those harmed by the current system, over the social and political interests of those who benefit from its perpetuation.

The question is not whether Islam can be compatible with human dignity and modern life. It can. The question is whether the human beings and institutions who speak in its name will find the will to make it so.

ENDNOTES

The following notes correspond to the bracketed superscript references in the text.

1. For the four Sunni madhabs (legal schools), see: Wael Hallaq, A History of Islamic Legal Theories (Cambridge: Cambridge University Press, 1997), 1–35.

2. Khaled Abou El Fadl, Speaking in God's Name: Islamic Law, Authority and Women (Oxford: Oneworld, 2001), 3–27.

3. Amina Wadud, Quran and Woman: Rereading the Sacred Text from a Woman's Perspective (New York: Oxford University Press, 1999), xi–xxiv.

4. Wael Hallaq, Sharia: Theory, Practice, Transformations (Cambridge: Cambridge University Press, 2009), 1–20.

5. The sole Quranic occurrence of the noun "sharia" is at Quran 45:18: "Then We put you on a clear path [sharia] of Our command, so follow it." Translation by M.A.S. Abdel Haleem (Oxford: Oxford World's Classics, 2004).

6. Abou El Fadl, Speaking in God's Name, 32–38. See also Sherman Jackson, Islam and the Problem of Black Suffering (Oxford: Oxford University Press, 2009), 55.

7. Mohammad Hashim Kamali, Principles of Islamic Jurisprudence, 3rd ed. (Cambridge: Islamic Texts Society, 2003), 14–27.

8. Hallaq, Sharia: Theory, Practice, Transformations, 359–362.

9. Hallaq, A History of Islamic Legal Theories, 75–120. The phrase "closure of the gate of ijtihad" is itself contested; Hallaq famously argued in his 1984 article that the gate was never formally closed: see Wael Hallaq, "Was the Gate of Ijtihad Closed?", International Journal of Middle East Studies 16, no. 1 (1984): 3–41.

10. Colin Imber, Ebu's-su'ud: The Islamic Legal Tradition (Edinburgh: Edinburgh University Press, 1997), 22–25.

11. Lama Abu-Odeh, "The Politics of (Mis)recognition: Islamic Law Pedagogy in American Academia," American Journal of Comparative Law 52 (2004): 789–824. See also Judith Tucker, Women, Family, and Gender in Islamic Law (Cambridge: Cambridge University Press, 2008), 1–28.

12. John Strawson, "Islamic Law and English Texts," Law and Critique 6 (1995): 21–38.

13. Kecia Ali, Marriage and Slavery in Early Islam (Cambridge, MA: Harvard University Press, 2010), 7–38.

14. Judith Tucker, Women, Family, and Gender in Islamic Law, 42–55.

15. Lynn Welchman, Women and Muslim Family Laws in Arab States (Amsterdam: Amsterdam University Press, 2007), 84–99.

16. Quran 4:34 reads: "Men are the protectors and maintainers of women [qawwamun], because Allah has given the one more [strength] than the other, and because they support them from their means." The interpretation of qawwamun is intensely contested. See Amina Wadud, Quran and Woman, 70–78.

17. Quran 4:3. The same verse is followed by 4:129: "You will not be able to treat your wives with perfect fairness, however much you desire to do so." The Islamic feminist argument is that read together, these verses effectively prohibit polygyny in practice. See Fatima Mernissi, Beyond the Veil: Male–Female Dynamics in Modern Muslim Society, revised ed. (Bloomington: Indiana University Press, 1987), 52.

18. Wadud, Quran and Woman, 82–83.

19. United Nations, Women and Law in the Muslim World (New York: UN Women, 2020), 34–42.

20. Sarah Kenyon Lischer, "Polygyny and Child Wellbeing in Sub-Saharan Africa," African Studies Review 61, no. 2 (2018): 155–179.

21. The Hadith in question is in Sahih al-Bukhari, no. 5133, and Sahih Muslim, no. 1422. For a critical historical review, see Myriam Sfeir, ed., The Oxford Encyclopedia of the Islamic World, s.v. "Marriage and Divorce" (Oxford: Oxford University Press, 2009).

22. T.O. Shanavas, Islamic Theory of Evolution: The Missing Link between Darwin and the Origin of Species (Brainbow Press, 2010), 190–205, reviewing the alternative historiography that places Aisha's age at approximately 18 at the time of marriage.

23. UNICEF, Child Marriage: Latest Trends and Future Prospects (New York: UNICEF, 2023), 8–12.

24. This ruling derives from Quran 2:221 and 5:5, and the jurisprudential consensus across all four Sunni schools. See Tucker, Women, Family, and Gender in Islamic Law, 65.

25. Ziba Mir-Hosseini, Marriage on Trial: A Study of Islamic Family Law (London: I.B. Tauris, 2000), 111–118.

26. Hallaq, Sharia: Theory, Practice, Transformations, 271–280.

27. The iddah provisions are set out in Quran 2:228–232 and 65:1–7, and extensively discussed in all classical fiqh manuals. See Ibn Qudama al-Maqdisi, al-Mughni (Beirut: Dar al-Kutub al-Ilmiyya, 1994), vol. 7, 459.

28. Salman Masood, "Pakistan Wrestles with Divorce by Text Message," The New York Times, 14 March 2022.

29. Derived from Quran 2:229: "But if you fear that they may not be able to maintain the limits set by God, there is no blame on either of them if the wife redeems herself [through khul']." See Tucker, Women, Family, and Gender in Islamic Law, 96–110.

30. Egypt's 2000 Personal Status Law reform introduced judicial khul' without spousal consent, based on a significant reinterpretation of the Hadith corpus. See Lynn Welchman, Women and Muslim Family Laws in Arab States, 120–135.

31. Nathalie Bernard-Maugiron and Baudouin Dupret, "Breaking Up: Divorce in Egyptian Law and Practice," Hawwa 6 (2008): 52–74.

32. Abou El Fadl, Speaking in God's Name, 211. The Maliki and Hanbali schools differ on the effect of triple talaq; the Hanafi school, dominant in South Asia, treats it as effective though sinful, which has fed the Indian controversy.

33. Muslim Women (Protection of Rights on Marriage) Act, 2019 (Act No. 20 of 2019), India. See also the Supreme Court of India's August 2017 constitutional judgment: Shayara Bano v. Union of India, (2017) 9 SCC 1.

34. Flavia Agnes, "Triple Talaq: The Political Stakes," Economic and Political Weekly 54, no. 33 (2019): 13–17.

35. Dawoud el-Alami and Doreen Hinchcliffe, Islamic Marriage and Divorce Laws of the Arab World (London: Kluwer Law International, 1996), 48–72.

36. Welchman, Women and Muslim Family Laws in Arab States, 158–167.

37. Tucker, Women, Family, and Gender in Islamic Law, 137–145.

38. Mir-Hosseini, Marriage on Trial, 145–162.

39. UN Convention on the Rights of the Child, 20 November 1989, 1577 UNTS 3, Article 3(1). For maslaha in custody contexts, see Abdullahi Ahmed An-Na'im, Islamic Family Law in a Changing World (London: Zed Books, 2002), 74–91.

40. Welchman, Women and Muslim Family Laws in Arab States, 170–185.

41. Paul Beaumont and Peter McEleavy, The Hague Convention on International Child Abduction (Oxford: Oxford University Press, 1999), 187–210.

42. UNICEF Middle East and North Africa, Fostering Children: The Kafala System in the Arab World (Amman: UNICEF MENA, 2014), 1–40.

43. Quran 24:31 and 33:59. Translation by M.A.S. Abdel Haleem. The Arabic term used in 24:31, khumur, means cloth or headscarf; the verse does not specify the face. The term jilbab in 33:59 denotes an outer garment. See Leila Ahmed, Women and Gender in Islam: Historical Roots of a Modern Debate (New Haven: Yale University Press, 1992), 54–64.

44. Leila Ahmed, A Quiet Revolution: The Veil's Resurgence from the Middle East to America (New Haven: Yale University Press, 2011), 8–16.

45. Fatima Mernissi, The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam (Reading, MA: Addison-Wesley, 1991), 85–102.

46. Haleh Esfandiari, Reconstructed Lives: Women and Iran's Islamic Revolution (Washington DC: Woodrow Wilson Center Press, 1997), 30–55.

47. Amnesty International, Iran: The Killing of Mahsa Amini and the "Woman, Life, Freedom" Uprising (London: Amnesty International, 2023).

48. United Nations Assistance Mission in Afghanistan (UNAMA), Situation of Human Rights in Afghanistan: January–June 2023 (Geneva: OHCHR, 2023), 22–40.

49. Ahmed, A Quiet Revolution, 189–210.

50. Joan W. Scott, The Politics of the Veil (Princeton: Princeton University Press, 2007), 1–25. See also Saba Mahmood, Politics of Piety: The Islamic Revival and the Feminist Subject (Princeton: Princeton University Press, 2005), 155–188.

51. S.A.S. v. France, Application No. 43835/11, European Court of Human Rights, Grand Chamber, 1 July 2014. The ECHR upheld the French ban, a decision widely criticised by human rights scholars.

52. Mahmood, Politics of Piety, 1–40. Ahmed, A Quiet Revolution, 217–230.

53. Fatima Seedat, "Islam, Feminism, and Islamic Feminism: Between Inadequacy and Inevitability," Journal of Feminist Studies in Religion 29, no. 2 (2013): 25–45.

54. Sherman Jackson, Islam and the Black American: Looking Toward the Third Resurrection (Oxford: Oxford University Press, 2005), 1–35.

55. Pew Research Center, The Future of World Religions: Population Growth Projections, 2010–2050 (Washington DC: Pew Research Center, 2015), 199–202.

56. Abdou Maliqalim Simone, In Whose Image? Political Islam and Urban Practices in Sudan (Chicago: University of Chicago Press, 1994), 45–68. See also Alexander Thurston, Salafism in Nigeria: Islam, Preaching, and Politics (Cambridge: Cambridge University Press, 2016), 1–40.

57. Only the Hanafi school historically permitted non-Arabic prayer in extremis; this dispensation was later retracted. See Kamali, Principles of Islamic Jurisprudence, 74.

58. Ethnologue: Languages of the World, s.v. "Arabic" (Dallas: SIL International, 2023).

59. Bobby Sayyid, A Fundamental Fear: Eurocentrism and the Emergence of Islamism (London: Zed Books, 1997), 89–100.

60. Human Rights Watch, Mali: Armed Islamists Punishing Women (New York: HRW, 2012). See also Jonathan Glasse, "The Destruction of Timbuktu's Heritage," Journal of African Cultural Heritage Studies 1, no. 1 (2013): 45–60.

61. Greg Fealy and Sally White, eds., Expressing Islam: Religious Life and Politics in Indonesia (Singapore: ISEAS, 2008), 40–75.

62. Margot Badran, Feminism in Islam: Secular and Religious Convergences (Oxford: Oneworld, 2009), 1–30.

63. Asma Sayeed, Women and the Transmission of Religious Knowledge in Islam (Cambridge: Cambridge University Press, 2013), 1–45.

64. Wadud, Quran and Woman, xix.

65. Mernissi, The Veil and the Male Elite, 68–80. Mernissi focused particularly on the transmitter Abu Hurayra, whose Hadith on women's ritual uncleanliness she subjected to biographical and contextual analysis.

66. Mir-Hosseini, Marriage on Trial, 1–20. See also her foundational article: Ziba Mir-Hosseini, "Muslim Women's Quest for Equality: Between Islamic Law and Feminism," Critical Inquiry 32 (2006): 629–645.

67. Morocco, Moudawwana (Family Code), Dahir No. 1-04-22, February 2004. See Fatima Sadiqi and Moha Ennaji, "The Feminization of Public Space: Women's Activism, the Family Law, and Social Change in Morocco," Journal of Middle East Women's Studies 2, no. 2 (2006): 86–114.

68. Tunisia, Code du Statut Personnel, Loi No. 57-3, 13 August 1956 (amended 2017). See Nadia Sonneveld and Monika Lindbekk, eds., Women Judges in the Muslim World: A Comparative Study of Discourse and Practice (Leiden: Brill, 2017), 200–218.

69. Musdah Mulia, Muslim Women: Reformers and Rebels (Kuala Lumpur: Sisters in Islam, 2011), 45–80.

70. Quran 2:275–279. The precise definition of riba has been debated since the earliest period; the question of whether all forms of interest or only exploitative excess charges are prohibited remains contested. See Mahmoud El-Gamal, Islamic Finance: Law, Economics, and Practice (Cambridge: Cambridge University Press, 2006), 1–30.

71. Islamic Financial Services Board, Islamic Financial Services Industry Stability Report 2023 (Kuala Lumpur: IFSB, 2023), 8.

72. El-Gamal, Islamic Finance, 65–90. See also Timur Kuran, Islam and Mammon: The Economic Predicaments of Islamism (Princeton: Princeton University Press, 2004), 1–45.

73. Quran 4:11–12. See Asifa Quraishi-Landes, "Interpreting the Quran and the Constitution: Similarities in the Use of Text, Tradition, and Reason in Islamic and American Jurisprudence," Cardozo Law Review 28 (2006): 71–72.

74. Kecia Ali, Sexual Ethics and Islam: Feminist Reflections on Quran, Hadith, and Jurisprudence (Oxford: Oneworld, 2006), 112–128.

75. Monia Hejaiej, "Tunisia's Equal Inheritance Law: An Analysis," Middle East Law and Governance 11 (2019): 1–24.

76. Abdullahi Ahmed An-Na'im, Islamic Family Law in a Changing World, 19. For English law comparison, see Mary Lyndon Shanley, Feminism, Marriage, and the Law in Victorian England (Princeton: Princeton University Press, 1989), 3–18.

77. Human Rights Watch, Walls at Every Turn: Abuse of Migrant Domestic Workers through Kuwait's Sponsorship System (New York: HRW, 2010), 1–40. Saudi Arabia's 2019 guardianship reforms allowed women over 21 to obtain passports and travel without mahram permission, a significant but partial reform.

78. Scott Kugle, Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims (Oxford: Oneworld, 2010), 41–85.

79. Ibid., 86–100. See also Joseph Massad, Desiring Arabs (Chicago: University of Chicago Press, 2007), 174–220.

80. Vern Bullough and Bonnie Bullough, Cross Dressing, Sex, and Gender (Philadelphia: University of Pennsylvania Press, 1993), 56–72. On classical jurisprudence and the khuntha mushkil (ambiguous-sex person), see Paula Sanders, "Gendering the Ungendered Body: Hermaphrodites in Medieval Islamic Law," in Women in Middle Eastern History, ed. Nikki Keddie and Beth Baron (New Haven: Yale University Press, 1991), 74–95.

81. Kugle, Homosexuality in Islam, 47–55.

82. Ibid., 56–70. For a counterargument maintaining the traditional reading, see Sayyid Mawdudi, Towards Understanding the Quran, vol. 3 (Leicester: Islamic Foundation, 1990), 45–48.

83. ILGA World, State-Sponsored Homophobia: Global Legislation Overview Update 2024 (Geneva: ILGA World, 2024), 6.

84. Ibid., 8–12. Iran has executed over 4,000 people for sodomy since 1979, according to the Iranian Human Rights Activists News Agency. Saudi Arabia carried out the most recent confirmed executions in 2019.

85. Amnesty International, Iran: Executions Surge to Highest Level in Five Years (London: Amnesty International, 2023), 21.

86. Fatima El-Tayeb, European Others: Queering Ethnicity in Postnational Europe (Minneapolis: University of Minnesota Press, 2011), 47–82.

87. Muslims for Progressive Values: https://mpvusa.org. See also Daayiee Abdullah, "An Islamic Perspective on Same-Sex Unions," in Tying the Knot: The Case for Equal Civil Marriage Rights for Same-Sex Couples in South Africa, ed. M. Judge et al. (Cape Town: The Forum for the Empowerment of Women, 2008), 45–55.

88. Kugle, Homosexuality in Islam, 180–210.

89. All four Sunni schools agree on the death penalty for male apostasy; the Hanafi school holds that women should be imprisoned until they return to Islam rather than executed. See Yohanan Friedmann, Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition (Cambridge: Cambridge University Press, 2003), 121–159.

90. Abdullahi Ahmed An-Na'im, Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law (Syracuse: Syracuse University Press, 1990), 109–129. An-Na'im's argument that the apostasy punishment is derived from a Medinan Hadith reflecting a specific historical-political context rather than an eternal divine command remains one of the most significant contributions to this debate.

91. US Commission on International Religious Freedom, Annual Report 2023 (Washington DC: USCIRF, 2023), 55–70.

92. Universal Declaration of Human Rights, GA Res. 217A (III), UN Doc. A/810 (1948), Article 18. International Covenant on Civil and Political Rights, 16 December 1966, 999 UNTS 171, Article 18.

93. Cairo Declaration on Human Rights in Islam, 5 August 1990, UN Doc. A/45/421/S/21797, Article 10.

94. An-Na'im, Toward an Islamic Reformation, 49–100.

95. Heiner Bielefeldt, "Muslim Voices in the Human Rights Debate," Human Rights Quarterly 17, no. 4 (1995): 587–617.

96. Al-Shatibi, al-Muwafaqat fi Usul al-Shariah (Beirut: Dar al-Ma'rifa, 1975), vol. 2, 8–10. For modern elaboration, see Jasser Auda, Maqasid al-Shariah as Philosophy of Islamic Law (Herndon, VA: IIIT, 2007), 1–50.

97. Tariq Ramadan, Radical Reform: Islamic Ethics and Liberation (Oxford: Oxford University Press, 2009), 50–89.

98. Musawah: A Global Movement for Equality and Justice in the Muslim Family, Framework for Action (Kuala Lumpur: Musawah, 2009). See also Valentine Moghadam, Globalizing Women: Transnational Feminist Networks (Baltimore: Johns Hopkins University Press, 2005), 130–165.

99. Sadiqi and Ennaji, "The Feminization of Public Space," 90–99.

100. Gary Bunt, iMuslims: Rewiring the House of Islam (Chapel Hill: University of North Carolina Press, 2009), 1–40.

101. Bettina Gräf and Jakob Skovgaard-Petersen, eds., Global Mufti: The Phenomenon of Yusuf Al-Qaradawi (London: Hurst, 2009), 1–25.

102. Oliver Roy, Globalised Islam: The Search for a New Ummah (London: Hurst, 2004), 14–35.

103. Abou El Fadl, Speaking in God's Name, 265.

104. Nasr Hamid Abu Zayd's case remains among the most dramatic instances of the political use of apostasy doctrine. See Nasr Hamid Abu Zayd and Esther R. Nelson, Voice of an Exile: Reflections on Islam (Westport, CT: Praeger, 2004).

105. Hallaq, Sharia: Theory, Practice, Transformations, 500–544.

SELECT BIBLIOGRAPHY

Primary Sources

Quran. Trans. M.A.S. Abdel Haleem. Oxford: Oxford World's Classics, 2004.

Al-Bukhari, Muhammad ibn Ismail. Sahih al-Bukhari. Compiled c. 846 CE. Trans. Muhsin Khan. Riyadh: Darussalam, 1997.

Al-Shatibi, Ibrahim. Al-Muwafaqat fi Usul al-Shariah. Beirut: Dar al-Ma'rifa, 1975.

Ibn Qudama al-Maqdisi. Al-Mughni. Beirut: Dar al-Kutub al-Ilmiyya, 1994.

Secondary Sources — Books

Abou El Fadl, Khaled. Speaking in God's Name: Islamic Law, Authority and Women. Oxford: Oneworld, 2001.

Abu Zayd, Nasr Hamid, and Esther R. Nelson. Voice of an Exile: Reflections on Islam. Westport, CT: Praeger, 2004.

Ahmed, Leila. Women and Gender in Islam: Historical Roots of a Modern Debate. New Haven: Yale University Press, 1992.

Ahmed, Leila. A Quiet Revolution: The Veil's Resurgence from the Middle East to America. New Haven: Yale University Press, 2011.

Ali, Kecia. Marriage and Slavery in Early Islam. Cambridge, MA: Harvard University Press, 2010.

Ali, Kecia. Sexual Ethics and Islam: Feminist Reflections on Quran, Hadith, and Jurisprudence. Oxford: Oneworld, 2006.

An-Na'im, Abdullahi Ahmed. Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law. Syracuse: Syracuse University Press, 1990.

An-Na'im, Abdullahi Ahmed, ed. Islamic Family Law in a Changing World. London: Zed Books, 2002.

Auda, Jasser. Maqasid al-Shariah as Philosophy of Islamic Law. Herndon, VA: IIIT, 2007.

Badran, Margot. Feminism in Islam: Secular and Religious Convergences. Oxford: Oneworld, 2009.

Beaumont, Paul, and Peter McEleavy. The Hague Convention on International Child Abduction. Oxford: Oxford University Press, 1999.

Bunt, Gary. iMuslims: Rewiring the House of Islam. Chapel Hill: University of North Carolina Press, 2009.

El-Alami, Dawoud, and Doreen Hinchcliffe. Islamic Marriage and Divorce Laws of the Arab World. London: Kluwer Law International, 1996.

El-Gamal, Mahmoud. Islamic Finance: Law, Economics, and Practice. Cambridge: Cambridge University Press, 2006.

El-Tayeb, Fatima. European Others: Queering Ethnicity in Postnational Europe. Minneapolis: University of Minnesota Press, 2011.

Esfandiari, Haleh. Reconstructed Lives: Women and Iran's Islamic Revolution. Washington DC: Woodrow Wilson Center Press, 1997.

Fealy, Greg, and Sally White, eds. Expressing Islam: Religious Life and Politics in Indonesia. Singapore: ISEAS, 2008.

Friedmann, Yohanan. Tolerance and Coercion in Islam: Interfaith Relations in the Muslim Tradition. Cambridge: Cambridge University Press, 2003.

Gräf, Bettina, and Jakob Skovgaard-Petersen, eds. Global Mufti: The Phenomenon of Yusuf Al-Qaradawi. London: Hurst, 2009.

Hallaq, Wael. A History of Islamic Legal Theories. Cambridge: Cambridge University Press, 1997.

Hallaq, Wael. Sharia: Theory, Practice, Transformations. Cambridge: Cambridge University Press, 2009.

Jackson, Sherman. Islam and the Black American: Looking Toward the Third Resurrection. Oxford: Oxford University Press, 2005.

Jackson, Sherman. Islam and the Problem of Black Suffering. Oxford: Oxford University Press, 2009.

Kamali, Mohammad Hashim. Principles of Islamic Jurisprudence. 3rd ed. Cambridge: Islamic Texts Society, 2003.

Kugle, Scott. Homosexuality in Islam: Critical Reflection on Gay, Lesbian, and Transgender Muslims. Oxford: Oneworld, 2010.

Kuran, Timur. Islam and Mammon: The Economic Predicaments of Islamism. Princeton: Princeton University Press, 2004.

Mahmood, Saba. Politics of Piety: The Islamic Revival and the Feminist Subject. Princeton: Princeton University Press, 2005.

Massad, Joseph. Desiring Arabs. Chicago: University of Chicago Press, 2007.

Mernissi, Fatima. Beyond the Veil: Male–Female Dynamics in Modern Muslim Society. Revised ed. Bloomington: Indiana University Press, 1987.

Mernissi, Fatima. The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam. Reading, MA: Addison-Wesley, 1991.

Mir-Hosseini, Ziba. Marriage on Trial: A Study of Islamic Family Law. London: I.B. Tauris, 2000.

Moghadam, Valentine. Globalizing Women: Transnational Feminist Networks. Baltimore: Johns Hopkins University Press, 2005.

Ramadan, Tariq. Radical Reform: Islamic Ethics and Liberation. Oxford: Oxford University Press, 2009.

Roy, Oliver. Globalised Islam: The Search for a New Ummah. London: Hurst, 2004.

Sayyid, Bobby. A Fundamental Fear: Eurocentrism and the Emergence of Islamism. London: Zed Books, 1997.

Sayeed, Asma. Women and the Transmission of Religious Knowledge in Islam. Cambridge: Cambridge University Press, 2013.

Scott, Joan W. The Politics of the Veil. Princeton: Princeton University Press, 2007.

Thurston, Alexander. Salafism in Nigeria: Islam, Preaching, and Politics. Cambridge: Cambridge University Press, 2016.

Tucker, Judith. Women, Family, and Gender in Islamic Law. Cambridge: Cambridge University Press, 2008.

Wadud, Amina. Quran and Woman: Rereading the Sacred Text from a Woman's Perspective. New York: Oxford University Press, 1999.

Welchman, Lynn. Women and Muslim Family Laws in Arab States. Amsterdam: Amsterdam University Press, 2007.

Journal Articles and Reports

Amnesty International. Iran: Executions Surge to Highest Level in Five Years. London: Amnesty International, 2023.

Bernard-Maugiron, Nathalie, and Baudouin Dupret. "Breaking Up: Divorce in Egyptian Law and Practice." Hawwa 6 (2008): 52–74.

Hallaq, Wael. "Was the Gate of Ijtihad Closed?" International Journal of Middle East Studies 16, no. 1 (1984): 3–41.

Hejaiej, Monia. "Tunisia's Equal Inheritance Law: An Analysis." Middle East Law and Governance 11 (2019): 1–24.

ILGA World. State-Sponsored Homophobia: Global Legislation Overview Update 2024. Geneva: ILGA World, 2024.

Islamic Financial Services Board. Islamic Financial Services Industry Stability Report 2023. Kuala Lumpur: IFSB, 2023.

Lischer, Sarah Kenyon. "Polygyny and Child Wellbeing in Sub-Saharan Africa." African Studies Review 61, no. 2 (2018): 155–179.

Mir-Hosseini, Ziba. "Muslim Women's Quest for Equality: Between Islamic Law and Feminism." Critical Inquiry 32 (2006): 629–645.

Pew Research Center. The Future of World Religions: Population Growth Projections, 2010–2050. Washington DC: Pew Research Center, 2015.

Sadiqi, Fatima, and Moha Ennaji. "The Feminization of Public Space: Women's Activism, the Family Law, and Social Change in Morocco." Journal of Middle East Women's Studies 2, no. 2 (2006): 86–114.

Seedat, Fatima. "Islam, Feminism, and Islamic Feminism: Between Inadequacy and Inevitability." Journal of Feminist Studies in Religion 29, no. 2 (2013): 25–45.

UNICEF. Child Marriage: Latest Trends and Future Prospects. New York: UNICEF, 2023.

United Nations Assistance Mission in Afghanistan (UNAMA). Situation of Human Rights in Afghanistan: January–June 2023. Geneva: OHCHR, 2023.

US Commission on International Religious Freedom. Annual Report 2023. Washington DC: USCIRF, 2023.